

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS LIABILITY
LITIGATION

THIS DOCUMENT RELATES TO:

All Suits Naming the Nashville Healthcare
Defendants

MDL No. 2419
Dkt. No 1:13-md-2419 (RWZ)

NOTICE OF FILING OF BELLWETHER CANDIDATE CASES

The “Nashville Healthcare Defendants”¹ state:

1. This Court’s July 9, 2015 Order stated:

If the remaining Tennessee defendants waive *Lexecon*, cases against them will be the first [bellwether] trials. The court will adopt the following [bellwether] selection process and trial schedule:

- The parties will select 16 potential [bellwether] trial cases (8 each) by August 14, 2015, and case-specific fact discovery will begin for those 16 cases.²

2. At the August 5, 2015 status conference, the Court recognized that no cases had the requisite *Lexecon* waivers for trials in Massachusetts.³ However, at the status conference with Judge Boal, Judge Boal instructed:

Judge Zobel did ask me to remind everyone that in the order dated July 9th of 2015, that on page 5 of that order, it does require the parties to select 16 potential [bellwether] trial cases by August 14th [.] [I]n light of the §157(b) briefing and until the Court orders otherwise, she would like that process to continue.⁴

¹ Defendants Saint Thomas Outpatient Neurosurgical Center, LLC; Howell Allen Clinic, a Professional Corporation; John Culclasure, MD; Debra Schamberg, RN; Vaughan Allen, MD; Saint Thomas West Hospital f/k/a St. Thomas Hospital; Saint Thomas Health; and Saint Thomas Network.

² Dkt. 2075.

³ Transcript, Zobel status conference, August 5, 2015, page 11-13.

⁴ Transcript, Boal hearing, August 5, 2015, page 6-7.

3. On August 12, 2015, counsel for the Nashville Healthcare Defendants and the PSC held a meet-and-confer to discuss the exchange of bellwether candidates per Judge Boal's instruction. Counsel agreed to exchange eight candidates per side with certain ground rules governing the selections.⁵

4. With this document, the Nashville Healthcare Defendants jointly give notice to the Court and all parties of their following proposed bellwether candidate cases, as categorized pursuant to the discussion on August 12:⁶

<u>Injury category</u>	<u>% of all cases</u>	<u>Case Name</u>	<u>Docket Number</u>
Death	12	1. <i>Temple v. Ameridose, et al.</i>	3:13-cv-01005 (M.D. Tenn.) / 1:13-cv-12696 (D. Mass.)
Meningitis + infection	38	2. <i>Brock v. Ameridose, et al.</i> 3. <i>Tyree v. Ameridose, et al.</i>	3:13-cv-01010 (M.D. Tenn.) / 1:13-cv-12731 (D. Mass.) 1:13-cv-12479 (D. Mass.)
Meningitis Only	16	4. <i>Parman v. Ameridose, et al.</i> 5. <i>Skelton v. Ameridose, et al.</i>	3:13-cv-08999 (M.D. Tenn.) / 1:13-cv-12433 (D. Mass.) 3:13-cv-00961 (M.D. Tenn.) / 1:13-cv-12575 (D. Mass.)
Local Infection Only	11	6. <i>Berry v. Ameridose, et al.</i>	3:13-cv-01032 (M.D. Tenn.) / 1:13-cv-12838 (D. Mass.)

⁵ Primarily, the parties agreed that they would select candidate cases from each of the injury categories set out at Dkt. 1958-2, in an effort to create a candidate pool that reflects a cross-section of injuries.

⁶ The Nashville Healthcare Defendants submit these eight candidates in accordance with the Court's order recognizing that the Court has not yet ruled on where these cases will be tried. These Defendants therefore reserve their rights to amend, add to, or take away bellwether candidates if the cases are transferred to Tennessee for trial or if the selection process is modified going forward or if other circumstances arise that justify such modifications.

No Disease	24	<p>7. <i>Kinsey v. Ameridose, et al.</i></p> <p>8. <i>Branham v. UniFirst, et al.</i></p>	<p>3:13-cv-00985 (M.D. Tenn.) / 1:13-cv-12571 (D. Mass.)</p> <p>3:13-cv-00984 (M.D. Tenn.) / 1:13-cv-12604 (D. Mass.)</p>
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Respectfully submitted,

/s/ Sarah P. Kelly

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* Admitted pursuant to MDL Order No. 1.

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be served electronically to the registered participants identified on the Notice of Electronic Filing on this 14th day of August, 2015.

/s/ Sarah P. Kelly

Sarah P. Kelly

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